

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ALFONSO MILLS,

Petitioner,

v.

Case No. 07-CV-13283
Honorable Victoria A. Roberts

MILLICENT WARREN,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR PLACEHOLDER
PETITION TO PROTECT TIME LIMITATIONS**

Petitioner, Alfonso Mills, a state inmate, currently incarcerated at the Thumb Correctional Facility in Lapeer, Michigan, has filed a *pro se* petition for writ of habeas corpus. Petitioner filed his petition on August 7, 2007, along with the present motion. Respondent's response to the petition is not due until February 13, 2008.

Petitioner was convicted in Oakland County Circuit Court on March 11, 2003, of six counts of criminal sexual conduct, MICH.COMP.LAWS § 750.520b(1)(a), and sentenced as a habitual offender, third, to thirty to sixty years imprisonment for each count, to run concurrently. Petitioner filed his direct appeal with the Michigan Court of Appeals, which was denied on June 24, 2004. *People v. Alfonso Mills*, No. 247948, 2004 WL 1416268 (Mich.App.Ct. June 24, 2004). His application for leave to appeal to the Michigan Supreme Court was denied on February 28, 2005. *People v. Alfonso Mills*, 472 Mich. 867, 692 N.W.2d 843 (2005). Petitioner did not file a writ of certiorari with the United States Supreme Court; he had ninety (90) days in which to seek a writ of certiorari with the United States Supreme Court. *See* Rule 13(1),

Supreme Court Rules. Thus, Petitioner's convictions became final on or about May 30, 2005. Petitioner then had until May 30, 2006 to file his habeas petition with this Court. 28 U.S.C. § 2244(d)(1)(A).

Subsequently, on May 11, 2006, Petitioner filed a motion for relief from judgment with the trial court, pursuant to M.C.R. 6.500, which tolled the statute of limitations period contained in 28 U.S.C. § 2244(d)(2). When Petitioner filed his motion for relief from judgment, he had nineteen (19) days remaining of the one-year statute of limitations. The trial court denied Petitioner's motion on October 9, 2006. Petitioner then filed an application for leave to appeal that decision with the Michigan Court of Appeals, which was denied on June 1, 2007. *People v. Alfonso Mills*, No. 274880 (Mich.App.Ct. June 1, 2007). His application for leave to appeal to the Michigan Supreme Court, which was filed on July 11, 2007, was recently denied. *People v. Alfonso Mills*, __N.W.2d __, 2007 WL 2757353 (Mich. Sept. 24, 2007).

Presently, Petitioner is asking this Court to allow him thirty (30) days from the date of Respondent's response in which to file an amended petition. Petitioner is able to file an amended petition prior to Respondent filing its response. Federal Rule of Civil Procedure 15 permits a party to amend a pleading once as a matter of law at any time before a responsive pleading is filed. Fed. R. Civ. P. 15. Respondent's response is not due until February 13, 2008. Therefore, Petitioner is allowed to file an amended petition prior to Respondent's Response.

Accordingly, the Court **DENIES** Petitioner's "Motion for Placeholder Petition to Protect Time Limitations.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: October 4, 2007

The undersigned certifies that a copy of this document was served on the attorneys of record and pro se petitioner by electronic means or U.S. Mail on October 4, 2007.

s/Carol A. Pinegar
Deputy Clerk